

August 30, 2002

EX PARTE – Via Electronic Filing

Ms. Marlene Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

Re: CC Docket No. 94-129

Dear Ms. Dortch:

On August 29, 2002, Jim Veilleux, Larry Leikin, and Cindy Hamilton (all of VoiceLog), and I (representing VoiceLog) met with Dane Snowden, Chief, Consumer and Governmental Affairs Bureau (CGB), Margaret Egler, Deputy Chief, CGB, Michele Walters, Chief, Policy Division, CGB, and Nancy Stevenson, Policy Division, CGB. We distributed the attached handout, which summarizes the principal points of our presentation.

The VoiceLog participants emphasized that the Commission's "drop off" rule, which requires sales personnel to drop off a third party verification call after initiating third party verification by way of a three-way conference call, is transparently and directly a restriction on speech. The purpose of the rule is to prohibit speech by the sales personnel. However, the "drop off" rule is not limited in scope to prohibiting misleading or coercive speech, but prohibits all speech between the marketer and the customer, including speech that is truthful and clearly protected by the First Amendment. Examples of protected commercial speech, inter alia, are advice on how to navigate an automated third party verification, when to answer questions, assistance with understanding terms such as "interLATA," answering consumers questions about rates, terms and conditions of the plan they are selecting, the identity of their existing carrier or the identity of the carrier to whom they are intending to switch. It is difficult to compile a complete list of all the types of protected speech that could occur, both because situations are dynamic and because the products that are covered by verification have been expanding beyond long distance service to include local services, which often creates additional questions.

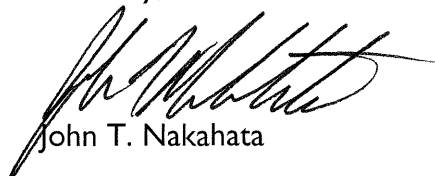
Because the "drop off" rule prohibits protected speech, the First Amendment requires that it be narrowly tailored. The "drop off" rule, however, is not narrowly tailored because it prohibits all speech by sales personnel. VoiceLog, in its petition for reconsideration, proposed a much more

narrowly tailored rule which permitted the sales personnel to remain on the line, allowed the sales personnel to provide navigational assistance and assistance in use of the third party verification system, and allowed sales personnel to respond to consumer-initiated requests for information with neutral, objective responses. VoiceLog's proposed rule would allow the sales personnel to communicate clearly protected information, but would still provide consumers with protection against being misled or unduly influenced during the verification. As a further example of a less restrictive alternative to the sweeping "drop off" rule, although VoiceLog does not believe such a requirement is necessary nor prudent, especially because it would raise verification costs, third party verification companies such as VoiceLog today also will, for carriers that desire this service, review verification recordings as part of the verification service.

VoiceLog urged that its petition for reconsideration be acted upon in the near future. In its experience, the "drop off" rule is causing unnecessary expense and competitive harm, especially to smaller carriers, which is manifesting itself as the Commission delays acting on VoiceLog's reconsideration petition. In addition, the rule itself was never properly justified, and the Commission never properly addressed the concerns of small businesses, as it was required to do by both the Administrative Procedure Act and the Regulatory Flexibility Act.

In accordance with the Commission's rules, a copy of this letter, with attachments, has been filed electronically in the above-captioned docket.

Sincerely,



John T. Nakahata

c: Dane Snowden
Margaret Egler
Michele Walters
Nancy Stevenson